Supreme Court, U. S.
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No. 79-1576

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

JEFFREY C. MILLER, Acting Director, Illinois Department of Public Aid and Successor in Office to ARTHUR F. QUERN,

Petitioner,

v.

MARY DILDA and MARGARET PFROMMER, individually and on behalf of all others similarly situated, et al,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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INDEX

OPINIONS BELOW 1
JURISDICTION 2
QUESTIONS PRESENTED FOR REVIEW 2
CONSTITUTIONAL PROVISIONS AND REGULATIONS INVOLVED 2
STATEMENT OF THE CASE 3
REASONS FOR GRANTING THE WRIT 5

The Form of Notice at Issue in the Case at Bar Contains all the Elements that the Supreme Court has Determined Necessary for Constitutional Sufficiency. 6

The Court of Appeals' Finding of Constitutional Insufficiency Ignores the Supreme Court's Criteria and Is Based Exclusively on Opinions of the Court of Appeals of the Seventh Circuit, All of Which Evade the Supreme Court's Criteria. 9

The Failure to Follow Supreme Court Precedent, When Repeated to the Detriment of a State, Raises Issues Concerning the Necessity of Supreme Court Review Which Transcend the Facts of an Individual Case. 12

CONCLUSION 16

APPENDICES:

A. "Memorandum Opinion and Order" of the United States District Court dated July 28, 1978. 1a

B. "Defendant's Report to the Court" with attached DPA Form 157 (R-1-77), filed August 30, 1978. ..... 5a

C. "Motion to Approve Defendant's Proposed Notice" with attached Proposed Manual page, filed October 23, 1978. ..... 9a

D. Order of the United States District Court dated November 27, 1978. ..... 12a

E. Plaintiff's "Motion to Vacate Order Approving Form Notice Submitted by Defendants and Memorandum in Support Thereof", filed February 21, 1979. ..... 13a

F. Order of the United States District Court dated February 21, 1979. ..... 19a

G. Decision of the United States Court of Appeals for the Seventh Circuit decided January 17, 1980 20a

INDEX

OPINIONS BELOW 1
JURISDICTION 2
QUESTIONS PRESENTED FOR REVIEW 2
CONSTITUTIONAL PROVISIONS AND REGULATIONS INVOLVED 2
STATEMENT OF THE CASE 3
REASONS FOR GRANTING THE WRIT 5

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States Court of Appeals for the Seventh Circuit was issued January 17, 1980 and is included herein as Appendix G. The opinion of the Seventh Circuit is reported at 612 F.2d 1055.

JURISDICTION

The decision of the United States Court of Appeals for the Seventh Circuit was entered January 17, 1980. This Petition for a Writ of Certiorari is filed within 90 days of the date of the entry of that decision. The Court's jurisdiction is invoked under Title 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED FOR REVIEW

1. Can a Court of Appeals require a State to follow a standard of procedural due process which is stricter than and in conflict with the standard established by the Supreme Court of the United States?

2. Can the Due Process clause of the United States Constitution be legitimately used by a Court of Appeals as a means for requiring a specific wording of notice to a welfare recipient?

3. When a Court of Appeals repeatedly disobeys Supreme Court directives to the detriment of a State, should the criteria for granting a Certiorari petition be less stringent than in a situation where the disobedience was an isolated incident?

CONSTITUTIONAL PROVISIONS AND REGULATIONS INVOLVED

Section 1 of the Fourteenth Amendment to the United States Constitution.

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

45 CFR § 205.10(a)(4)(i)(B).

> "In cases of intended action to discontinue, terminate, suspend or reduce assistance: (i) The State or local agency shall give timely and adequate notice... Under this requirement... (B) 'Adequate' means a written notice that includes a statement of what action the agency intends to take, the reasons for the intended agency action, the specific regulations supporting such action, explanation of the individual's right to request an evidentiary hearing (if provided) and a State agency hearing, and the circumstances under which assistance is continued if a hearing is requested."

STATEMENT OF THE CASE

Petitioner Miller, as Acting Director of the Illinois Department of Public Aid[1] administers the Aid to Families with Dependent Children Program for Illinois pursuant to 42 U.S.C. § 601 *et seq.* Federal Regulations relating to the program, 45 C.F.R. § 205.10(a)(4)(i)(B), require that, prior to reduction or termination of benefits, a recipient must be given notice of the contemplated action and of the right to request an administrative due process hearing.

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[1] Arthur F. Quern (Defendant below) resigned as the Director of the Illinois Department of Public Aid, effective September 1, 1979. Jeffrey C. Miller has been appointed as Acting Director of the Illinois Department of Public Aid. Supreme Court Rule 48(3) provides that under such circumstances Jeffrey C. Miller should be automatically substituted as a party.

Respondents (plaintiffs below) brought a class action in the United States District Court on the basis that Petitioner's notices of reduction and termination lacked sufficient detail to satisfy statutory, regulatory, and constitutional requirements.

The form of notice then being employed by Petitioner gave as a reason for reduction "The Resource Consultant has re-budgeted your income and the appropriate change has been made." The notice did not include the calculations which Petitioner used in redetermining the amount of respondent's assistance.

The District Court ruled that the particular notice was constitutionally deficient because it did not contain an explanation of how and why the grant was recomputed and that therefore the recipient lacked a basis for determining the propriety of the reduction and the need to seek administrative appeal. Petitioner was enjoined from using such notices as a basis for grant reductions until notices were furnished that the Court deemed adequate. Appendix A.

Petitioner subsequently submitted to the Court examples of notices which contained additional explanation of the reasons for reduction and contained certain dollar amounts relevant to the individual cases. Appendices B and C. After examination, the District Court approved the form of notice suggested by Petitioner. Appendix D. Respondents moved that the District Court vacate its order and enter an order requiring a notice designed by Respondents. Appendix E. This motion by Respondents was denied by the District Court. Appendix F.

Relying exclusively on constitutional decisions it had itself made in previous welfare cases, the Court of Appeals for the Seventh Circuit reversed the lower court ruling, and stated that Respondents form of notice would satisfy due process requirements. Appendix G.

REASONS FOR GRANTING THE WRIT

The Court of Appeals for the Seventh Circuit has imposed upon the State of Illinois a requirement that neither statute nor Supreme Court decision deem necessary. To the contrary, in the name of its own interpretation of the Due Process clause, the Seventh Circuit has rejected a finding directly concerning the Due Process clause made by the Supreme Court in *Goldberg* v. *Kelly*, 397 U.S. 254 (1970). It has attempted to force the State to do that which the Supreme Court has ruled is not required under the Constitution.

This encroachment of the State's powers is not an isolated action. Rather it is part of a pattern of cases issued by the Court of Appeals for the Seventh Circuit. In these cases, constraints of that appellate court's choosing have been imposed upon the state, all in the name of an artificial reading of the Due Process clause, directly antithetical to the explicit finding of *Goldberg* on the same subject matter. These findings are based upon private judicial preference, couched as Constitutional necessity.

These invasions of the State's reserved powers are especially insidious because of their individual incremental appearance. Each pseudo-constitutional burden placed upon the State could, in itself, be deemed not of sufficient moment to require this Honorable Court to grant a Certiorari petition in order to rectify the incursion. The act of the Seventh Circuit in the case at bar, however, shows the culmination of this pseudo-constitutional interference, building upon its own past pseudo-constitutional cases. A pattern and practice has now been explicitly demonstrated, operating directly in contravention of Supreme Court precedent, invading powers and choices constitutionally reserved to the State.

I.

THE FORM OF NOTICE AT ISSUE IN THE CASE AT BAR, CONTAINS ALL THE ELEMENTS THAT THE SUPREME COURT HAS DETERMINED NECESSARY FOR CONSTITUTIONAL SUFFICIENCY.

Goldberg v. *Kelly*, 397 U.S. 254 (1970) clearly established the constitutional principle that, prior to discontinuance of welfare benefits, an opportunity to be heard must be afforded the recipient. *Goldberg* also explicitly passed upon the constitutionality of certain procedural elements inexorably intertwined with that requirement for a pre-termination hearing. The Court particularly addressed as a matter of constitutional law the manner in which the recipient was informed by the state welfare agency of his right to a pre-termination hearing:

> Nor do we see any constitutional deficiency in the content or form of the notice. New York employs both a letter and a personal conference with a caseworker to inform a recipient of the precise questions raised about his continued eligibility. Evidently the recipient is told the legal and factual bases for the Department's doubts. This combination is probably the most effective method of communicating with recipients.

Id. at 268.

In the case at bar, the state welfare agency had designed a notice system employing the Department's "Form 157." On this form the recipient is told that his benefits are going to be reduced (or ended), that he has an opportunity for a personal conference with a representative of his local office and that he may appeal. In the system proposed, for cases involving terminations of benefits resulting from increased Social Security benefits or increased earned income, the following text is to be inserted after the word "REASON":

> "Because your increased income from Social Security Benefits (new amount $), your income now exceeds your income maintenance needs".

> "Because of your increased earned income (new gross amount before deductions $), your income now exceeds your income maintenance needs."

The form also showed the new amount of benefit after the reduction.[2]

This form of notice is on all fours with the form of notice that the *Goldberg* court found to be constitutionally sufficient. It gives a clear reason for reduction or termination; it provides opportunity for caseworker conference; it describes the procedures for appealing.

A recent case deciding the issue of notice is *Memphis Light, Gas & Water Division* v. *Craft*, 436 U.S. 1 (1978), where this Court held that a municipal utility deprived certain customers with a disputed utility bill of an interest in property without due process of law by terminating their service without appropriate notice and opportunity for the availability of an administrative procedure for protesting the threatened termination. This case illustrates the constitutional requirements for a notice in a deprivation situation similar to *Goldberg*.

As in *Goldberg* the Court discussed that utilities were "a necessity of modern life" *Id.* at 18, and that no exception from due process requirements was justified. There must be "an avenue of redress" *Id.* at 13, such as an appeal procedure available to the aggrieved person. The Court found that the utility had not provided an adequate avenue of redress, stating that:

> [The utility's] notification procedure, while adequate to inform the plaintiffs of the threat of termination of service,

---

[2] The language used for reductions after the word "REASON" is:

"Your increased income from Social Security Benefits, (new amount $) is being applied to your needs."

"Your increased earned income (new gross amount before deductions $) is being applied to your needs."

> was not "reasonably calculated" to inform them of "an opportunity to present their objections" to their bills. [Quoting *Mullane Central Hanover Trust Co.*, 339 U.S. 306, 314 (1950).]

Id. at 14.

The Court said "we agree with the Court of appeals that due process requires the provision of an opportunity for the presentation to a designated employee of a customer's complaint . . ." *Id.* at 16. And again, "The opportunity for a meeting with a responsible employee empowered to resolve the dispute could be afforded well in advance of the scheduled date of termination". *Id.* at 18.

The contrast to the notice in the case at bar is extreme. Here the Notice originally sent to the Plaintiffs gave them all the *Memphis Light* Court would have asked and more. The DPA 157 states that the reduction in benefits "*will not* be taken if you can show that it is wrong. You may meet with a representative from your local office to question this action . . . If you wish such a meeting, contact your caseworker. Whether or not you have such a meeting, you will still have the right to appeal the intended action". And most clearly stated is the Right to Appeal and be given a hearing. And if the appeal is within 10 days assistance will not be reduced until a decision is made on the appeal after the hearing.

The most stringent due process standards yet established by this court are those found in *Goldberg*. The notice given in the case at bar clearly met those standards and indeed went well beyond those standards in informing the recipient of the action taken affecting his public assistance benefits and his right to appeal.

II.

THE COURT OF APPEALS FINDING OF CONSTITUTIONAL INSUFFICIENCY IGNORES THE SUPREME COURT'S CRITERIA AND IS BASED EXCLUSIVELY ON SEVENTH CIRCUIT OPINIONS, ALL OF WHICH EVADE THE SUPREME COURT CRITERIA.

In the case at bar, the Court of Appeals for the Seventh Circuit, rejected the approval of the notice by the trial court and stated:

> "On the basis of *Vargas* and *Banks*, the notice approved by the district court is insufficient. *Though it states the ultimate reason for the reduction or cancellation of benefits*, the notice fails to provide the recipient with a breakdown of income and allowable deductions. It is readily apparent from this notice that, without these calculations, plaintiffs have little protection against errors committed by the Department in determining the amount of their grants. Appendix G, at 23-24a (emphasis added).

Although the court admitted that the reason for reduction is in the notice, it added elements it believed ought to be in the notice. The opinion cites no Supreme Court precedent, but only two opinions: *Vargas* v. *Trainor* 508 F 2d 837 (7th Cir. 1975), and *Banks* v. *Trainor*, 525 F. 2d 837 (7th Cir. 1975), cert. denied, 424 U.S. 978 (1976). It is not mere coincidence that these two cited case are the Seventh Circuit's own cases.

In fact, what is most relevant in the Seventh Circuit's opinion below is that neither *Goldberg* nor other Supreme Court authority is cited. Ignored was the *Goldberg* finding that a notice system was constitutionally satisfactory which was comprised of "a letter and a personal conference with a caseworker to inform a recipient of the precise questions raised about his continued eligibility." *Goldberg* v. *Kelly*, 397 U.S. at 268.

The Seventh Circuit ignored this Supreme Court finding, preferring its own *Vargas* and *Banks* rulings. But *Vargas* and *Banks* likewise ignore this aspect of *Goldberg* although they claim to follow *Goldberg*.

In *Vargas*, the Seventh Circuit stated that the state welfare agency failed to give the reason for the reduction of benefits. On such a basis the case would be compatible with *Goldberg*. But *Vargas* would thus *not* be relevant in regard to the case at bar where the reason for reduction is supplied explicitly.

In *Banks*, the Seventh Circuit used its holding in *Vargas* to evade *Goldberg*. The state welfare agency had sent notice of benefit reductions to recipients with the following reason for and detail concerning the proposed benefit reduction:

> Because of a requirement in Section 271.3 of the regulations issued by the Food and Nutrition Service of the United States Department of Agriculture (7 C.F.R. Section 271.3) the determination of how much you must pay for food stamps is going to be based upon your income. Illinois has been calculating your payment level for food stamps using a method that related to the amount of your grant. The change to this 'income method' will take place starting with the month of July, 1975.
>
> This change in method of calculation will result in your receiving less "bonus value" from the Food Stamp Program than you previously received (this 'bonus value' is the difference between the value of the food stamps and the amount you have to pay for them). The difference between the way your food stamp benefits would have been calculated under the old method and under the 'income method' is shown on the enclosed card as follows:
>
> > (The notice then showed a facsimile of the enclosed card, showing income, old bonus value, and new bonus value, and offered by mail an itemized computation.)

The Seventh Circuit then cited *Vargas* not for the proposition that a reason was omitted, but as constitutional precedent for a Seventh Circuit-invented standard of requisite detail:

> The notices sent to this class did not contain a breakdown of income and deductions so that the recipients could determine the accuracy of the computations . . . Both *Goldberg* and *Vargas* require detailed notice of adverse action as a protection against agency error and arbitrariness.

Banks v. *Trainor*, 525 F.2d at 842

Vargas, even if valid for the proposition that failure to include a reason voids the notice, is *not* valid nor precedential concerning the requisite detail for any particular notice. *Vargas*, in fact, because it ruled *no* reason existed, never talked of what detail it imagined necessary. *Goldberg* spoke not of "detailed notice", but of "an adequate notice detailing the reasons for a proposed termination and an effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally." *Goldberg* v. *Kelly*, 397 U.S. at 267, 268.

In stating that *Goldberg* required a "detailed notice" *Banks* allowed itself to avoid that balancing of interests that *Goldberg* itself employed. And when the *Goldberg* court balanced those interests, it stated

> We recognize, too, that both welfare authorities and recipients have an interest in relatively speedy resolution of questions of eligibility, that they are used to dealing with one another informally, and that some welfare departments have very burdensome caseloads. These considerations justify the limitation of the pretermination hearing to minimum procedural safeguards, adapted to the particular characteristics of welfare recipients, and to the limited nature of the controversies to be resolved. We wish to add that we, no less than the dissenters, recognize the importance of not imposing upon the States or the Federal

> Government in this developing field of law any procedural requirements beyond those demanded by rudimentary due process.

Goldberg v. *Kelly*, 397 U.S. at 267

The result of the *Goldberg* balancing was the finding of constitutional sufficiency where a letter was sent showing a reason for reduction and opportunity was given to talk with a caseworker. The Supreme Court recognized that the fundamental protection was the hearing process itself and that the "notice" was just that: a notification of the reason for reduction so that the recipient could decide if he wished to avail himself of his appeal rights.

Both in *Banks* and the case at bar, the Seventh Circuit sought to elevate specific elements of factual statement ("breakdown of income and deductions") to the level of constitutional issues. It totally lost sight of *Goldberg's* basic teaching that the *hearing* is the basic constitutional safeguard; the notice merely informs the client of the *reason for* (not the explicit details of) the action and describes appeal rights. The reasoning of *Goldberg* has been lost in the dross of detail.

III.

THE FAILURE TO FOLLOW SUPREME COURT PRECEDENT, WHEN REPEATED TO THE DETRIMENT OF A STATE, RAISES ISSUES CONCERNING NECESSITY OF SUPREME COURT REVIEW WHICH TRANSCEND THE FACTS OF AN INDIVIDUAL CASE.

This Petitioner attempted to have this Honorable Court review the *Banks* decision but its Petition for a Writ of Certiorari was denied. As an individual, isolated action, this Honorable Court evidently felt *Banks* to be an individual case of insufficient import to merit review. The decision in the case

at bar, however, shows that the Seventh Circuit is following a pattern and practice of depriving the State of rights, not just an isolated abberation.

Faced with the notice in the case at bar which clearly satisfies the *Goldberg* requirements, the Seventh Circuit stated:

> Though it states the ultimate reason for the reduction or cancellation of benefits, the notice fails to provide the recipient with a breakdown of income and allowable reductions. Appendix G, at 23-24a.

The Seventh Circuit thus concluded, based on *Banks* and *Vargas*, that the notice deprived the recipients of the Seventh Circuit version of Due Process of Law.

The Seventh Circuit has built its own due process requirements, ignoring (and contraverting) those enunciated in *Goldberg*. It has shown that it intends continually to perpetrate this incursion of the State's powers by repeating and enlarging its constitutionally abberational incursion.

It is most significant here that the District Court, which had the duty of fashioning a remedy, thought that the proposal of the petitioner cured any constitutional violation. The Court of Appeals not only told him he was wrong in approving the State agency's form of notice, but instructed him on the exact piece of paper to use, a clear infringement of the power of a state agency to run its own affairs as long as it does not violate the law.

This Court pointed this out clearly in *Rizzo* v. *Goode*, 423 U.S. 361 (1976), when it spoke of:

> . . . the well-established rule that the Government has traditionally been granted the widest latitude in the 'dispatch of its own internal affairs'. . . [quoting *Sampson* v. *Murray*, 415 U.S. 61, 83 (1974)]

Id. at 378, 379.

A related problem was before this Court more recently in *Vermont Yankee Nuclear Power* v. *Natural Resources Defense Council, Inc.*, 435 U.S. 519 (1978). This court held that the Court of Appeals should not have required the Atomic Energy Commission in federal agency rule-making to grant additional procedural rights which the Commission was not required to do by law and chose not to do in the exercise of its discretion. The Court of Appeals was told it should "not stray beyond the judicial province to explore the procedural format or to impose upon the agency its own notion of which procedures are 'best' or most likely to further some vague, undefined public good." *Id.* at 549.

In its zeal to dominate where it should not tread, the Court of Appeals for the Seventh Circuit also violated the principle that statutory issues must be considered prior to reaching constitutional issues. The second sentence of the opinion is:

> Because the notice fails to meet the demands of procedural due process, we reverse. Appendix G, at 20a.

The Court of Appeals later states that plaintiffs contended that under certain federal regulations *and* the Due Process Clause, the notice approved by the District Court was infirm. The regulations themselves are relegated to citation in a footnote (n.2) and their applicability to the notice not even considered.

This Court in *New York City Transit Authority* v. *Beazer* 440 U.S. 568 (1979) after stating that "The Court of Appeals did not even reach the Title VII issue", went on to say:

> We do not condone this departure from settled federal practice. "If there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it is that we ought not to pass on questions of constitutionality . . . unless such adjudication is unavoidable." *Spector Motor Co.* v. *McLaughlin*, 323 U.S. 101, 105. Before deciding the constitutional question, it was incumbent on those courts to consider whether the statutory grounds might be depositive . . .

Id. at 582. See also *Youakim* v. *Miller*, 425 U.S. 231 (1976).

The Seventh Circuit feels free to decide not merely what the law is but what it feels the law ought to be. Its opinion in the instant case concludes:

> Finally, we believe that the risk of erroneous calculations by the Department far outweighs the increased burden on the administration which, the Department contends, will occur if the budgeting calculations are included in the notice sent to plaintiffs. Due Process can be satisfied by simply photocopying the work papers and enclosing them with the notice approved by the district court. The expense involved in fulfilling plaintiff's request, moreover, is trivial. Appendix G, at 24a.

This gratuitous expression of what the Seventh Circuit would prefer as state procedures reflects a fundamental misunderstanding of the role of the circuit courts. It is up to the state welfare agency to design, within constitutional and statutory limitations, the most efficient procedures for its work.

> We . . . recognize the importance of not imposing on the States . . . in this developing field of law any procedural requirements beyond those demanded by rudimentary due process.

Goldberg v. *Kelly*, 397 U.S. at 267

The Seventh Circuit takes a different view. If Plaintiffs suggest a procedure, and if procedural burdens imposed by that suggested procedure are "trivial" in its eyes, the Seventh Circuit finds that procedure constitutionally necessary.

Unless and until this Honorable Court grants a Petition for a Writ of Certiorari to review this form of circuit court intervention through pseudo-constitutional construction, the Seventh Circuit is apparently going to continue its pattern and practice of invading the powers of decision-making and privileges constitutionally left to State action.

CONCLUSION

This Court has clearly established the principle that a welfare recipient must have the opportunity to make a reasoned decision concerning the advisability of seeking administrative appeal prior to benefit reduction. But this Court has also clearly stated that the State should not be unduly burdened procedurally in administering welfare programs. The Court of Appeals below has chosen not to abide by the latter principle and has repeatedly so chosen. Each individual case is an invasion of the state's powers, but, from an exterior viewpoint, an invasion of only moderate magnitude. The Court of Appeals thus could deem itself immune from review on Certiorari. Petitioner submits, however, that particularly because the Court of Appeals is repeating its invasions of state power, this Honorable Court ought to recognize the cumulative import of these repetitive erroneous incursions upon state powers and grant review.

For the reasons above, Petitioner prays that this Honorable Court grant this Petition for a Writ of Certiorari.

Respectfully Submitted,

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APPENDIX

APPENDIX A

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Name of Presiding Judge, Honorable FRANK J. MCGARR

Cause No. 77 C 115	Date 7/28/78
Title of Cause	MARY DILDA and MARGARET PROMMER, individually and on behalf of all others similarly situated v. ARTHUR F. QUERN, Director, Illinois Dept. of Public Aid
Brief Statement of Motion	The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).
Names and Addresses of moving counsel	
Representing	
Names and Addresses of other counsel entitled to notice and names of parties they represent.	

Reserve space below for notations by minute clerk

Pursuant to memorandum opinion and order entered this day, plaintiff's motion for partial summary judgment as to Count I of the second amended complaint is granted. Defendant's motion for partial summary judgment is denied. Defendant given thirty days to furnish to the plaintiff and file with the court a form of notice which adequately details the factual basis and reason for the reduction, etc. Defendant is enjoined from terminating or reducing benefits to the plaintiff class without furnishing the plaintiff class with notice deemed adequate by the court.—DRAFT

Hand this memorandum to the Clerk.
Counsel will not rise to address the Court until motion has been called.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARY DILDA and MARGARET PROMMER, individually and on behalf of all others similarly situated, *Plaintiffs,*	No. 77 C 115
v.	
ARTHUR F. QUERN, Director, Illinois Department of Public Aid, *Defendant.*	

MEMORANDUM OPINION AND ORDER

Plaintiff Mary Dilda, individually and on behalf of all others similarly situated, seeks declaratory and injunctive relief against the Director of the Illinois Department of Public Aid for reducing her AFDC benefits through "re-budgeting" her income without notifying the plaintiff of the method by which the revised budget was calculated. Plaintiff contends that this action is in violation of the notice provisions of Title IV-A of the Social Security Act (42 U.S.C. §§ 601, *et seq.*), its implementing regulations and the due process clause of the Fourteenth Amendment to the United States Constitution. The plaintiff class consists of all recipients of assistance from IDPA under Title IV of the Social Security Act whose benefits have been reduced because of rebudgeting by the IDPA without any explanation of how the revised budget was calculated. This case is now before the court on cross motions for partial summary judgment as to Count I of plaintiff's second amended complaint.

The uncontroverted facts are these. AFDC grants are computed from an individualized calculation of family size, income, expenses and deductions for each recipient. The plaintiff is an AFDC recipient whose benefits were reduced by the IDPA. The form notice provided to the plaintiff stated the reason for the reduction as "The Resource Consultant has re-budgeted your income and the appropriate change has been made." The notice did not include the calculations which the IDPA used in redetermining plaintiff's grant.

The sole issue before the court is whether the notice received by the plaintiff is adequate under Title IV of the Social Security Act, its implementing regulations and the due process clause of the Fourteenth Amendment. Due process requires that the recipient have "timely and adequate notice detailing the reasons" for the proposed change. *Goldberg* v. *Kelly,* 397 U.S. 254, 267-268, 90 S.Ct. 1011, 1020, 25 L.Ed. 287 (1970). Notice of adverse action should be sufficiently detailed to protect the recipient from agency arbitrariness and error. *Vargas* v. *Trainor,* 508 F.2d 485, 490 (7th Cir. 1974). The notice should provide a "breakdown of income and deductions so that the recipients could determine the accuracy of the computations". *Banks* v. *Trainor,* 525 F.2d 837, 842 (1975).

The notice furnished the plaintiff in this case is constitutionally deficient. Because the notice does not include an explanation of how and why the plaintiff's AFDC grant was recomputed, the plaintiff has no basis to determine the propriety of the reduction and the need to appeal. The notice thus does not furnish the factual basis for and the reasons behind the decision as required by due process.

Accordingly, plaintiff's motion for partial summary judgment as to Count I of the second amended complaint is granted. Defendant's motion for partial summary judgment is denied. Defendant is given thirty days to furnish to the plaintiff and file with the court a form of notice which adequately details the

factual basis and reason for the reduction. The notice should include a calculation of how the IDPA computes the plaintiff's AFDC grant and how and why this computation has been altered to cause the reduction in benefits. Defendant is further enjoined from terminating or reducing benefits to the plaintiff class without furnishing the plaintiff class with notice deemed adequate by the court.

ENTER:

/s/ FRANK J. McGARR
United States District Judge

DATED: July 28, 1978

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARY DILDA, et al., *Plaintiff,* v. **ARTHUR F. QUERN, et al.,** *Defendant.*	No. 77 C 115

DEFENDANT'S REPORT TO THE COURT

This Court has ordered Defendant to furnish to the Court a form of Notice, to be used in cases of reductions or cancellations of assistance benefits because of "rebudgeting", which adequately provides notice of the basis and reason for the Department's action. The notice sent to the named plaintiff in this case violated even the Defendant's prior policy due to the "reason" for the changes inserted by the caseworker. Defendent's solution to this problem is to remove the caseworker's discretion in drafting a written reason for the DPA 157 Notice of Change form. The Department is presently compiling a list of specific particularized form sentences for use in the "Reason" section of the form, DPA 157. These form sentences would require the caseworker to indicate the type of income that was increased as well as the new income amount which was budgeted resulting in the cancellation or reduction in assistance.

There are a variety of different types of income which are budgeted—Social Security, Private Pension, State Pension, Earnings. Below are examples of the form sentences that would be used with 1) increased social security benefits and 2) increased earned income, both for cancellations and reductions.

Cancellations

"Because your increased income from Social Security Benefits (new amount $), your income now exceeds your income maintenance needs".

"Because of your increased earned income (new gross amount before deductions $), your income now exceeds your income maintenance needs."

Reductions

"Your increased income from Social Security Benefits, (new amount $) is being applied to your needs."

"Your increased earned income (new gross amount before deductions $) is being applied to your needs."

These are merely examples of language being developed for such situations. Other language will be developed for other types of income. While the exact language may be modified before formal submission to the Court, the substance of what is contained in these sentences should be adequate under the Court's Memorandum Opinion and Order. A formal submission of the Department's proposed policy revisions will be made upon counsel's return from vacation.

Respectfully submitted,

/s/ WILLIAM J. SCOTT
William J. Scott
Attorney General of Illinois

JAMES C. O'CONNELL
Special Assistant
Attorney General
(Of Counsel)
Suite Three Hundred
130 North Franklin
Chicago, IL 60606
793-2380

Illinois Department of Public Aid
Departamento de Ayuda Pública de Illinois
NOTICE OF CHANGE
NOTIFICACION DE CAMBIO

*DATE OF NOTICE
*FECHA DE NOTIFICACION

Cat	Co/Dist	Grp	Basic
Cat	Co/Dist	Grp	Básico

Mailing Address
Dirección Postal

Enter Case Name/Address if Different from Mailing Name/Address
Llene si el Nombre/Dirección del caso es diferente al Nombre/Dirección postal

To:
A:

Beginning in _____, your assistance benefits will be:
Empezando en _____, sus beneficios de ayuda pública serán:

☐ REDUCED under the:
REBAJADOS bajo el
☐ DISCONTINUED under the
DESCONTINUADOS bajo el

☐ AFDC INCLUDING MEDICAL
AFDC INCLUYENDO MEDICO
☐ GA INCLUDING MEDICAL
GA INCLUYENDO MEDICO
☐ FOOD STAMP PROGRAM
PROGRAMA DE SELLOS DE COMIDA
☐ MANG PROGRAM
PROGRAMA DE MANG
☐ AABD INCLUDING MEDICAL
AABD INCLUYENDO MEDICO
☐ RRA PROGRAM
PROGRAMA DE RRA
☐ SOCIAL SERVICES (specify) _____
SERVICIOS SOCIALES (especifique)
☐ OTHER
OTRO

If reduced, your monthly assistance benefits will change as shown below.
Si rebajados sus beneficios mensuales de ayuda pública cambiarán como sigue

☐ New Check Amount
Nueva Cantidad
☐ New Food Stamp Amounts
Nueva Cantida de Sellos de Comida
Purchase requirement $ _____
Usted Paga
Bonus amount $ _____
Cantidad de Bono
Coupon allotment $ _____
Total de Sellos

☐ New Service Amount _____
Nueva Cantidad de Servicios

REASON
RAZON

Per Policy Statement Contained in:
Cita de Póliza Contenida en

Categorical Assistance or General Assistance
Manual Topic _____
Asistencia de Categoría o Asistencia General
Tópico del Manual
Food Stamp Manual Chapter or Food Stamp O.B. No. _____
Capítulo del Manual de Sellos de Comida o Boletín Oficial No.

Local Office Administrator _____
Administrador de la Oficina Local

Local Office Address Stamp
Dirección de la Oficina Local

SEE OTHER SIDE FOR IMPORTANT INFORMATION
VEA EL REVERSO PARA INFORMACION IMPORTANTE

DPA 157 (R-1-77)

This action *will not* be taken if you can show that it is wrong. You may meet with a representative from your local office to question this action. This meeting would be informal and you may present information or evidence. You may be represented by the person(s) of your choice. If you wish such a meeting, contact your caseworker. Whether or not you have such a meeting, you will still have the right to appeal the intended action.

Esta acción *no se tomará* si usted puede demostrar que es errónea. Usted puede reunirse con un representante de su oficina local para cuestionar esta decisión. Esta reunión será informal y usted podrá presentar información o evidencia. Usted puede ser representado por una persona o personas que usted escoja. Si usted desea tal reunión, póngase en contacto con su trabajador. Aunque usted tenga o no tenga esta reunión, usted todavía tendrá el derecho de apelar la decisión que se piensa tomar en su caso.

If your eligibility for Food Stamps as a public assistance household is terminated, you may immediately apply for non-assistance Food Stamps. If your Medical Assistance is being discontinued as a result of your assistance grant being discontinued, you may apply for MANG (Medical Assistance-No Grant).

Si su elegibilidad para Sellos de Comida como un hogar de ayuda pública es terminada, usted puede aplicar inmediatamente para los Sellos de Comida como un hogar que no recibe ayuda pública. Si su Ayuda Médica es descontinuada porque su caso de ayuda pública es descontinuado, usted puede aplicar para MANG (Ayuda Médica-Sin Cheque).

For further information concerning the nearest legal services available to you in this matter, you may call the following telephone number in your area:

(a) in Cook County, within Chicago: 663-4190 or 922-5625
(b) in Cook County, outside of Chicago: 263-2285
(c) outside of Cook County (toll free): 1-800-642-5581

Para mas información acerca de los servicios legales más cercanos disponsibles a usted, usted puede llamar al siguiente número de teléfono en su area:

(a) en el Condado de Cook, en Chicago: 489-0765 o 922-5625
(b) en el Condado de Cook, fuera de Chicago: 263-2285
(c) fuera del Condado de Cook (sin cargos): 1-800-642-5581

YOU HAVE THE RIGHT TO APPEAL THIS DECISION

At any time, *within* 60 days following the *"DATE OF NOTICE", you have the right to appeal this decision and be given a fair hearing. Such an appeal must be in writing and filed with the Department. You may represent yourself at this hearing or you may be represented by anyone else, such as a lawyer, relative or friend. Your local office will provide you with an appeal form and will help you fill it out if you wish. If you appeal in writing *within* 10 days of the *"DATE OF NOTICE", your assistance and/or food stamps will be continued at the present level until a decision is made on your appeal after the hearing.

USTED TIENE EL DERECHO DE APELAR ESTA DECISION

En cualquier momento, *dentro de* 60 días después de *"FECHA DE NOTIFICACION", usted tiene el derecho de apelar la decisión y de que se le dé una vista imparcial. Tal apelación tiene que ser por escrito y ser registrada con el Departamento. Usted puede representarse personalmente en esta vista o puede ser representado por otra persona tal como su abogado, familiar, o amigo. Su oficina local le proveerá la forma de apelación y le ayudará a llenarla si usted lo desea. Si usted apela por escrito *dentro de* los 10 días de la *"FECHA DE NOTIFICACION", su ayuda pública y/o sellos de comida serán continuados al mismo nivel hasta que se haga la decisión después de la vista.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

MARY DILDA, et al.,
Plaintiffs,
v.
ARTHUR F. QUERN,
Defendant.
No. 77 C 115

MOTION TO APPROVE DEFENDANT'S PROPOSED NOTICE

NOW COMES the Defendant, ARTHUR F. QUERN, by and through his attorney, WILLIAM J. SCOTT, Attorney General of the State of Illinois, and moves this Honorable Court to approve defendant's proposed Manual Release provisions and in support states:

1. This Court's order of July 28, 1978, required defendant to file its revised policy and pertaining to notice of the reasons for reduction suspension or termination of AFDC grants due to increase in income.

2. On August 30, 1978, defendant filed with this Court and with plaintiffs a proposed "reasons" to be inserted on defendant's DPA 157, Notice of Change.

3. Attached hereto is defendant's draft Manual Release modifying PR-230 of the AFDC Manual which defendant intends to publish in final form upon this Court's approval.

WHEREFORE, defendant respectfully requests this Court approve the draft Manual Release and the "reasons" to be inserted thereon previously filed with the court.

Respectfully submitted,

/s/ WILLIAM J. SCOTT

William J. Scott
Attorney General
State of Illinois

JAMES C. O'CONNELL
Special Assistant Attorney
General (Of Counsel)
130 North Franklin, Suite 300
Chicago, IL 60606 793-2380

RIGHTS AND RESPONSIBILITIES

230 NOTICE TO CLIENT

230.1 *Application for financial assistance*—Form DPA 360, Notice of Decision on Application for Assistance Grant, will be completed as a central action by Data Process and immediately sent to an applicant when a decision has been made to approve or deny financial assistance.

Application for medical assistance—Form DPA 458, Notice of Decision on Application for medical Assistance, is to be completed by the local office in full and immediately sent to an applicant when a decision has been made to approve or deny medical assistance.

Application for foster care—Form DPA 860, Notice Regarding Assistance for Child Placed in Foster Care, is to be completed by the AFDC-F office and immediately sent to an applicant when a decision has been made to approve or deny foster care assistance.

230.2 Form DPA 157, Notice of Change, is to be completed in full and sent to a recipient when a decision has been made to reduce, suspend or terminate the assistance grant.

When the reduction, suspension or termination is due to budgeting increased income, the following reasons are to be used on the DPA 157, as applicable:

REDUCTIONS

"Your increased unearned income from (new amount—$) is being applied to your needs."

"Your increased earned income (new net amount after deductions—$) is being applied to your needs."

CANCELLATIONS

"Because of your increased unearned income from (new amount—$) your income now exceeds your income maintenance needs."

"Because of your increased earned income (new gross amount before deductions—$), your income now exceeds your income maintenance needs."

When unearned income is budgeted, the type of income (such as Social Security Benefits) should be included in the appropriate blank.

230.3

230.4 Form DPA 157 is to be completed in full and sent to a service client when a decision has been made to reduce, suspend or terminate service payments.

APPENDIX D

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

Name of Presiding Judge, Honorable FRANK J. McGARR

Cause No. 77 C 115 Date 11/27/78

Title of Cause: MARY DILDA, et al. v. ARTHUR F. QUERN,

Brief Statement of Motion: The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and Addresses of moving counsel

Representing

Names and Addresses of other counsel entitled to notice and names of parties they represent.

Reserve space below for notations by minute clerk

Pretrial conference held. Pursuant to an order of court requiring the defendant to file its revised policy and notice of the reasons for reduction, suspension, or termination of AFDC grants due to increase in income, the defendants have presented a proposed form of notice of change (DPA 157), examples of form sentences to be used in the instances of the various reasons for cancellations or reductions, and a draft of a manual revision modifying PR-230 of the AFDC manual, which defendant intends to publish.

The court approves the notice, form sentences, and manual revision as presented, with the exception that the language in the manual revision Paragraph 230.2 under "Reductions" is modified so that the second sentence thereunder reads, "Your increased earned income (new net amount after deductions-$) is being applied to your needs.

The revised policies are ordered to be published and in effect on or before December 30, 1978. Cause set for Status Report on January 4, 1979, at 10 a.m. Exhibits attached.

Hand this memorandum to the Clerk.
Counsel will not rise to address the Court until motion has been called.

APPENDIX E

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

MARY DILDA, et al., *Plaintiffs,* v. **JAMES L. TRAINOR, et al.,** *Defendants.*	No. 77 C 115

MOTION TO VACATE ORDER APPROVING FORM NOTICE SUBMITTED BY DEFENDANTS AND MEMORANDUM IN SUPPORT THEREOF

I.

NATURE OF RELIEF REQUESTED BY PLAINTIFFS

Plaintiffs respectfully request that this Court vacate its order of November 27, 1978, approving defendants' proposed notice and to enter an order requiring the defendants to provide a notice which would provide a breakdown of income and deductions so that the recipients could determine the accuracy of the computations.

II.

NOTICE PROPOSED BY THE DEFENDANT VIOLATES DUE PROCESS IN THAT IT FAILS TO PROVIDE A BREAKDOWN ON INCOME AND DEDUCTIONS

The notice proposed by defendants would merely state:

DEDUCTIONS

"Your increased earned income from (new net amount after deductions $) is being applied to your needs."

"Your increased earned income (new gross amount before deductions—$) is being applied to your needs."

CANCELLATIONS

"Because of your increased unearned income from (new amount—$) your income now exceeds your income maintenance needs."

"Because of your increased earned income (new gross amount before deductions—$), your income now exceeds your income maintenance needs."

That notice is inadequate. It is similar to the notice rejected by the Court in *Banks* v. *Trainor* 525 F.2d 837 841, 842 (7th Cir. 1975). The Court held:

> Under *Goldberg* v. *Kelly*, 397 U.S. 254 and *Vargas* v. *Trainor* 508 F. 2d 485 (7th Cir. 1974) Court denied 420 U.S. 1008 it would appear that the Notice and card sent to the plaintiff class were deficient.
>
> The Notices sent to the class did not contain a breakdown of income and deductions so that the recipients could determine the accuracy of the computations. Since the Notices do not inform recipients of what factors are relevant in determining net food stamp income, the plaintiff class cannot inform caseworkers of expenditures that should be used . . .
>
> Both *Goldberg* and *Vargas* require detailed notice of adverse action as a protectors against agency error and arbitrariness. Because the calculation of food stamp benefits under the income method requires an individualized determination of income, expenses and deductions for each recipient, due process requires full and adequate prior written notice.

On May 2, 1977, the Court certified the following class:

> All persons who receive assistance from the Illinois Department of Public Aid under Title IV of the Social Security Act and who have had their benefits reduced because of rebudgeting by the Illinois Department of Public Aid without any explanation of how the revised budget was calibrated.

On July 28, 1978, this Court entered our order and memorandum opinion granting plaintiffs partial summary judgment. The opinion states:

> The sole issue before the Court is whether the notice received by the plaintiff is adequate under Title IV of Social Security Act, its implementing regulations and the due process clause of the Fourteenth Amendment. Due process requires that the recipient have "timely and adequate notice detailing the reasons" for the proposed change. *Goldberg* v. *Kelly*, 397 U.S. 254, 267-268, 90 S. Ct. 1011, 1020, 25 L. Ed. 2d 287 (1970). Notice of adverse action should be sufficiently detained to protect the recipient from agency arbitrariness and error. *Vargas* v. *Trainor* 508 F. 2d 485, 490 (7th Cir. 1974). *The Notice should provide a 'breakdown of income and deductions so that the recipient could determine the accuracy of the computations' Banks* v. *Trainor*, 525 F. 2d 837, 842 1975) Page 2-3 of Opinion. [Emphasis added]

The notice submitted by the defendant does not contain a "breakdown of income and deductions so that the recipients could determine the accuracy of the computations". Use of that notice would be violative of due process.

Attached hereto as Exhibit A, is the form used by the Illinois Department of Public Aid in computing the adjusted net income from rents in determining adjusted net income. Note that the form provides a breakdown of deductions for such items as: principal and interest, tax, water, gas, electricity and heat.

Attached hereto as Exhibit B is Illinois Department of Public Aid Form DPA 553B (N-6-74) used in completing the net adjusted income for earned income. Note that the form provides a breakdown of deductions for: federal and state taxes, social security, transportation, lunch, 30, plus 1/3 of remainder, and other mandatory deduction.

The form proposed by the defendant simply does not provide a breakdown of deductions. It does not even provide a figure representing the total sum of the deductions.

The form attached hereto and marked Exhibit A is used by the Department in each case wherein rental income will cause a reduction or termination in benefits. The form attached hereto and marked Exhibit B is used by the Department in each case where earned income is the basis of a reduction or termination in benefits.

If the defendant were to provide a copy of appropriate form used to calculate the reduction together with the proposed notice, the two together would provide a "breakdown of income and deductions so that the recipients could determine the accuracy of the computations".

Respectfully submitted,

/s/ THOMAS GRIPPANDO

Thomas Grippando

THOMAS GRIPPANDO
COOK COUNTY LEGAL ASSISTANCE FOUNDATION, INC.
Attorney for Plaintiffs
1701 S. First Avenue
Maywood, Illinois 60513
Telephone (312) 343-8630

Department of Public Aid

BUDGET COMPUTATION—AFDC

CASE NAME _____ CAT. _____ CO./DIST. _____ GRP. _____ BASIC _____ # IN ASSIST. UNIT _____ INTAKE SPECIALIST _____ DATE _____

DETERMINATION OF ELIGIBILITY FOR EARNED INCOME EXEMPTION $

Gross Monthly Earnings:

Allowable Deductions:

Fed. & State Taxes $ _____

Social Security _____

Other (Mandatory) _____

Total— _____

Remainder _____

Employment Expenses:

Transportation $ _____

Child Care _____

Other (Mandatory) _____

Total— _____

Remainder _____

FLAT GRANT AMOUNT _____

(CIRCLE ONE) DEFICIT OR SURPLUS _____

Computations:

☐ Authorization—Regular Submittal Effective _____ mo/yr

☐ Mercury _____ Period: _____ - _____ = _____

mo/yr from (mo/da) through # of days

☐ Mercury _____ Period: _____ - _____ = _____

mo/yr from (mo/da) through # of days

☐ Disbursing Order _____ For _____ Amount $ _____

mo/yr need

"SCHEDULE B"

Date July 6, 1976

CASE NAME Dilda, Mary CASE NUMBER 4-229-03-511097

Statement of monthly income from rentals and shelter allowance from property located at 1535 N. 33rd Melrose Pk., 60160, Illinois.

Actual Expenses	Monthly Totals = 3	Recipient's Share = ⅔	Tenant's Share = ⅓
Principal		$109.07	$54.54
Interest	163.61		
Tax			
Water	6.67	4.45	2.22
Gas			
Electricity			
Heat			
Totals	$170.28	$114.52	$56.76

Gross Monthly Rental Income—	165.00
Less Expenses for Production of Income	56.76
Net Monthly Rental Income	108.24

Resources Recommendation:

A) Under item 80. Code 108, on the FO-552—make property allowance of $. ; also allow utilities based on number of persons in family.

B) Under item 90, code item 534 = 108.24

NOTE: If there is an increase or decrease in number of units rented in building, a referral must be made to Resources: Re-refer to

Resources on 6-77

for Annual Review.

RESOURCES CONSULTANT

APPENDIX F

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

Name of Presiding Judge, Honorable Frank J. McGarr

77 C 115 Date Feb. 21, 1979

Title of Cause *Mary Dilda et al.* v. *James Trainor et al.*

Brief Statement of Motion Motion to Vacate Order Approving Form Notice Submitted by Defendants and Memorandum in Support Thereof

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and Addresses of moving counsel
Thomas Grippando
Cook County Legal Assistance Foundation, Inc.
1701 South First Avenue
Maywood, IL 60153

Representing Plaintiffs

Names and Addresses of other counsel entitled to notice and names of parties they represent.
James O'Connell
Special Asst. Attorney General
100 North LaSalle
Chicago IL 60602

Reserve space below for notations by minute clerk

Plaintiff's motion to dismiss Count II of complaint as moot is granted. Plaintiffs' motion to vacate order approving form notice submitted by defendants is denied. Final order has been entered. Cause closed. Status hearing set for Mar. 7, 1979 is stricken. Plaintiffs' have 20 days in which to file motion for attorneys fees and costs, with reply to be filed 15 days thereafter. Motion for fees and costs will be taken under advisement.

Hand this memorandum to the Clerk.
Counsel will not rise to address the Court until motion has been called.

APPENDIX G

No. 79-1340

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MARY DILDA, et al., *Plaintiffs-Appellants,* v. **ARTHUR QUERN, Director, Illinois Department of Public Aid,** *Defendant-Appellee.*	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division No. 77-C-115 **Frank J. McGarr,** Judge.

ARGUED NOVEMBER 26, 1979—DECIDED JANUARY 17, 1980

Before SWYGERT, *Circuit Judge,* WISDOM, *Senior Circuit Judge,*[1] and TONE, *Circuit Judge.*

PER CURIAM. The sole issue presented by this appeal is whether the district court erred in holding that a form of notice proposed by the Illinois Department of Public Aid adequately details the basis for a reduction or cancellation of benefits to persons participating in the Aid to Families with Dependent Children Program. Because the notice fails to meet the demands of procedural due process, we reverse.

[1] The Honorable John Minor Wisdom, United States Senior Circuit Judge for the Fifth Circuit, sitting by designation.

I

This case was brought by a welfare recipient in her own behalf and for a representative class challenging the practice of the Illinois Department of Public Aid ("Department") of reducing or cancelling benefits under Title IV of the Social Security Act, 42 U.S.C. §§ 601 *et seq.*, through "rebudgeting" without notifying the recipients of the method by which the revised reduction or cancellation was calculated.

AFDC benefits are determined on the basis of family size and income, less certain expenses and deductions. Plaintiff Dilda is an AFDC recipient whose benefits were reduced by the Department. She was informed of the reduction when the Department mailed her a form notice which stated: "The Resource Consultant has re-budgeted your income and the appropriate change has been made." The calculations which the Department used in redetermining plaintiff's grant were not included in the notice.

The district court granted summary judgment in favor of the plaintiffs, finding the Department's notice inadequate under the Due Process Clause for failing to include "an explanation of how and why the plaintiff's AFDC grant was recomputed. . . ." The Department was ordered to furnish plaintiffs and the court with a form of notice which provided a "breakdown of income and deductions so that the recipients could determine the accuracy of the computations," *citing Banks* v. *Trainor,* 525 F.2d 837, 842 (7th Cir. 1975), *cert. denied,* 424 U.S. 978 (1976). The district court enjoined the Department from cancelling or reducing benefits to the class until they received such notice.

Pursuant to the court's order the Department filed with the district court a proposed notice of the reasons for cancellations or reductions of the AFDC grant. The district court approved the proposed form of notice, which contains the following statements.

DEDUCTIONS

Your increased earned income from _____ (new net amount after deductions $_____) is being applied to your needs.

Your increased earned income (new net amount after deductions—$_____) is being applied to your needs.

CANCELLATIONS

Because of your increased unearned income from _____ (new amount—$_____) your income now exceeds your income maintenance needs.

Because of your increased earned income (new gross amount before deductions—$_____), your income now exceeds your income maintenance needs.

Nowhere in the notice was a provision made for revealing what deductions were relied upon by the Department in calculating the adjusted net amount. Plaintiffs moved to vacate the order approving the Department's notice. The motion was denied and this appeal followed.

II

Plaintiffs contend that under certain federal regulations[2] and the Due Process Clause, the above notice is infirm. They further contend that the district court, in approving the notice, disregarded its own memorandum opinion granting plaintiffs summary judgment.

Plaintiffs argue that the notice sent to recipients should include the Department's worksheets which reflect the rebudgeting calculations so that they will be able to readily determine if there was an error in the rebudgeting process.[3] The worksheet used where excess income is earned contains a statement of the recipient's gross monthly earnings and the allowable deductions. The form calls for completing the flat

[2] 45 C.F.R. § 205.10(a)(i)(B) and 45 C.F.R. § 2061.0 (a)(ii)(4).

[3] The worksheets appear in the Appendix of Plaintiffs at pp. 25-26.

grant amount and any other grants for special needs. It also contains a section for the special needs. On the basis of this information, the caseworker determines the amount of the grant. A second worksheet is used by the Department to calculate the amount of the grant where the excess income is derived from rents received by the recipient. This worksheet contains a statement of allowable deductions, including principal, interest, taxes, water, gas, electricity, and heat, and breaks down the expenses into the recipient-landlord's share and the tenant's share.

The Department maintains that the attachment of the budget sheets to the notice sent to the class is not required either by the regulations at issue or by the Due Process Clause. According to the Department, the form notice which the district court approved is sufficient notice because it contains "a brief statement of reasons" for the proposed reduction or cancellation of welfare benefits.

In the context of public assistance benefits, this court held in *Vargas* v. *Trainor*, 508 F.2d 485, 489 (7th Cir. 1974), that due process requires notice "stating the reasons for the proposed action" be given to the recipient before his benefits can be reduced or cancelled. Specifically, we found that a notice which "merely showed the amounts of the components of the recipient's grant, as reduced by the proposed action, and did not state the reasons for that action" failed to meet the requirements of the Due Process Clause. *Id.* at 490. Since the *Vargas* decision, this court has held that the failure of state authorities to provide public assistance recipients with detailed notice, including "a breakdown of income and deductions so that the recipients could determine the accuracy of the computations" may be a denial of due process. *Banks* v. *Trainor*, 525 F.2d 837, 842 (7th Cir. 1975), *cert. denied*, 424 U.S. 978 (1976). On the basis of *Vargas* and *Banks*, the notice approved by the district court is insufficient. Though it states the ultimate

reason for the reduction or cancellation of benefits, the notice fails to provide the recipient with a breakdown of income and allowable deductions. It is readily apparent from this notice that, without these calculations, plaintiffs have little protection against errors committed by the Department in determining the amount of their grants. As the court recognized in *Vargas:*

> Unless the welfare recipients are told why their benefits are being reduced or terminated, many of the mistakes that will inevitably be made will stand uncorrected, and many recipients will be unjustly deprived of the means to obtain the necessities of life.

Vargas, supra, 508 F.2d at 490.

Finally, we believe that the risk of erroneous calculations by the Department far outweighs the increased burden on the administration which, the Department contends, will occur if the budgeting calculations are included in the notice sent to plaintiffs. Due process can be satisfied by simply photocopying the work papers and enclosing them with the notice approved by the district court. The expense involved in fulfilling plaintiffs' request, moreover, is trivial.

The judgment of the district court is reversed.

A true Copy:

Teste:

Clerk of the United States Court of Appeals
for the Seventh Circuit